

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 689

J. C. WALTON, APPELLANT,

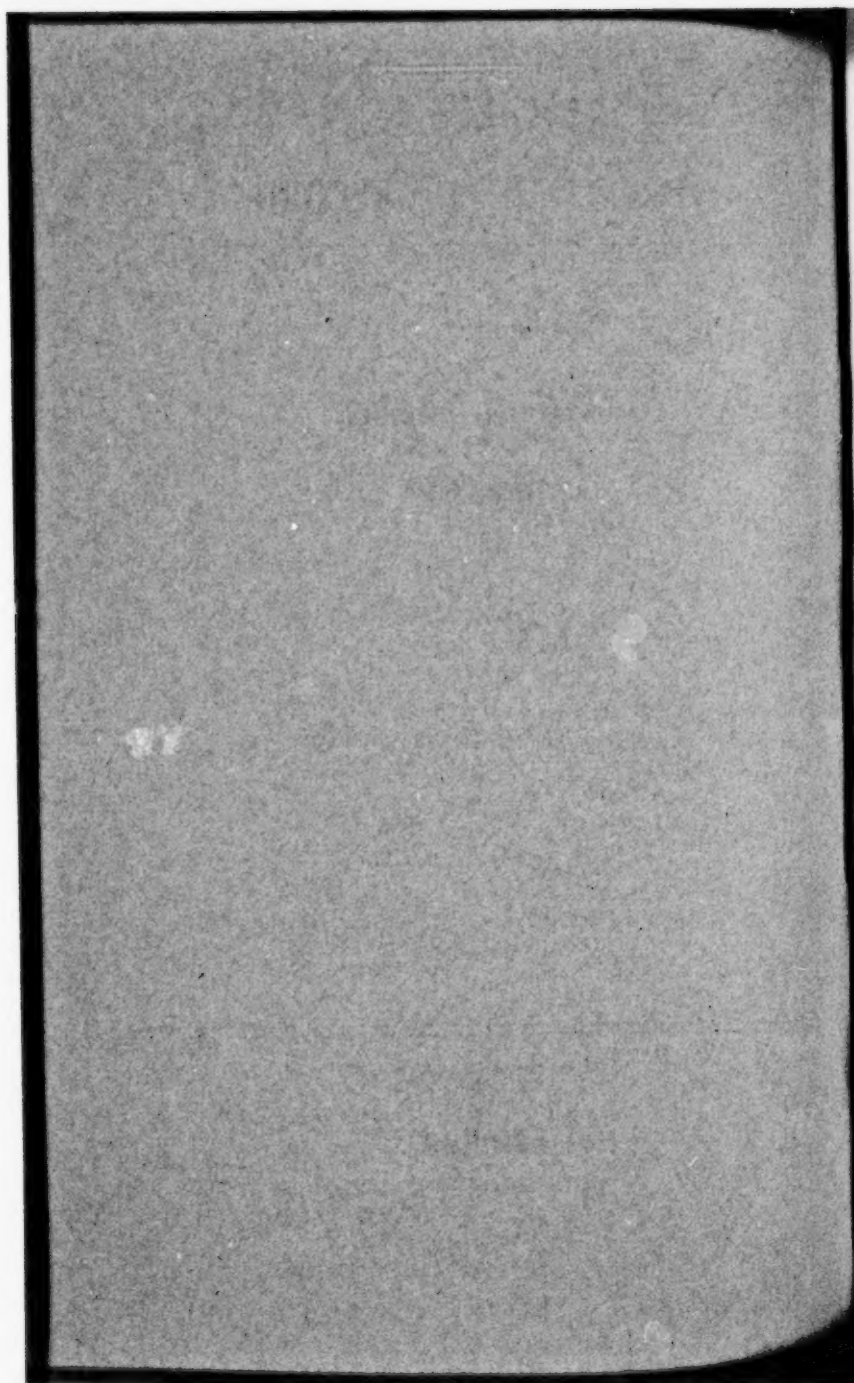
vs.

**THE HOUSE OF REPRESENTATIVES OF THE STATE OF
OKLAHOMA AND ITS SPEAKER, W. D. McBEE; ISAAC W.
GRAY, CHIEF CLERK, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF OKLAHOMA**

FILED DECEMBER 16, 1923

(29,999)



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[fol. 1] CITATION AND SERVICE—Omitted in printing.

[fol. 2] [File endorsement omitted.]

[fol. 3]

IN THE

**UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF WESTERN OKLAHOMA**

No. —

J. C. WALTON, Plaintiff,

vs.

THE HOUSE OF REPRESENTATIVES OF THE STATE OF OKLAHOMA, and its Speaker W. D. McBee; Isaac W. Gray, Chief Clerk, and the Board of Managers, to wit, Wesley D. Disney, James R. Tolbert, D. A. Stovall, T. H. Wren, W. J. Otjen, Jess L. Pullen, and Leslie E. Salter; M. E. Trapp, Lieutenant Governor and the Knights of the Ku Klux Klan or Invisible Empire of the State of Oklahoma, and N. C. Jewett, the Grand Dragon and Chief Executive Officer of said Association, Defendants.

BILL OF COMPLAINT—Filed Nov. 6, 1923

Comes now the plaintiff and for his cause of action against the defendants and each of them says and avers, that the plaintiff is now and has been at all times hereinafter mentioned the duly elected, qualified and acting Governor of the state of Oklahoma and commissioned as such; that the defendant the House of Representatives of the State of Oklahoma is a public corporation organized and existing under and by virtue of the constitution and laws of the said State of Oklahoma, and that the defendant W. D. McBee is the duly elected and authorized Speaker and executive officer thereof at this special session; and the defendant Isaac W. Gray is the duly elected, authorized and acting Chief Clerk of said House; that the defendant M. E. Trapp is the duly authorized and acting Lieutenant Governor of the State of Oklahoma, and the Knights of the Ku Klux Klan or Invisible Empire is a national organization with its chief office in the city of Atlanta, Georgia, and its supreme chief executive officer is — Evans, whose title is the Imperial Wizard, and that the Knights of the Ku Klux Klan of the State of Oklahoma is a branch of said national organization, and the defendant N. C. Jewett, who bears the title of Grand Dragon, is the chief executive officer for the said Knights of the Ku Klux Klan for the Realm of the State of Oklahoma with his office in the city of Oklahoma City; that all of said defendants have their main office and may be served within the Western District of the said State of Oklahoma. That the said House of

[fol. 4] Representatives is authorized under the constitution and law to investigate and present charges of impeachment against the Governor and other elective officers of said State at a general session of the legislature, and when said subject is submitted to it at a special session; that the said defendants herein, the Board of Managers, as the duly authorized representatives of said House of Representatives, did present to and file with the State Senate on the day of October, 1923, certain pretended articles of impeachment against the plaintiff herein; that under the law the said House was authorized and did pursuant thereto appoint the Board of Managers consisting of the defendants, Wesley D. Disney, James R. Tolbert, D. A. Stovall, T. H. Wren, W. J. Otien, Jess L. Pullen and Leslie E. Salter, and that said last named defendants as a Board of Managers are now wrongfully and unlawfully engaged in the prosecution of the plaintiff herein upon said pretended articles of impeachment before the Senate organized and sitting as a Court of Impeachment, which said articles of impeachment are void and of no effect and the Court of Impeachment had no jurisdiction to entertain and enter upon the consideration of said articles of impeachment with a view of rendering judgment thereon for the reasons hereinafter set out.

Plaintiff avers that the said Invisible Empire and its members have for more than two years been engaged throughout the State of Oklahoma in the purpose of pretending to aid in the enforcement of the laws, and that under said pretence said organization has in many of the counties in the State of Oklahoma secretly selected and accused citizens of the State of Oklahoma of moral obliquities, crimes and misdemeanors, and have by the means of armed and disguised mobs condemned said persons to physical punishment either with or without trial and investigation in their jurisdiction, and have seized many of such persons at different times and places, aggregating, as your plaintiff is informed and believes and therefore avers the fact to be, many hundreds, and have visited upon such persons so selected as its victims, punishment to their persons and property and reputations; that said depredations so carried on by the Invisible Empire have included the crimes of riot, arson, maiming, felonious assault, perjury, subornation of perjury, and murder; that the plaintiff in his official capacity as Governor of the State of Oklahoma aforesaid, having obtained information and knowledge of such depredations, undertook to cause the persons engaged in such depredations to be detected, apprehended and tried through the ordinary offices of the State of Oklahoma and the several counties wherein depredations had occurred and to prevent the continuance and repetition of said [fol. 5] crimes; that in the prosecution of such purpose, your plaintiff ascertained that the fact was that the said organization known as the Knights of the Ku Klux Klan of the Invisible Empire had succeeded in placing some of its members in the various offices throughout the state of county attorney, sheriff, judges of the courts and officers of the cities and towns in said state, and that said officers, members of said organization, were unfaithful to their official oaths, and instead of rendering service and obedience to the laws of Oklahoma,

rendered their allegiance and obedience to the commands of the said Invisible Empire to the end that *that* the members of said organization who had been guilty of said crimes should be protected from the consequences of their acts, and that said unlawful and felonious practices of the said organization should be perpetuated and continued and should not be interrupted by the enforcement of the laws of the state in such cases made and provided; that all persons becoming members of the Knights of the Ku Klux Klan are required to and do subscribe to an oath, a part of which oath is as follows:

"I, ———, in the presence of God and man most solemnly pledge, promise and swear, unconditionally, that I will faithfully obey the Constitution and laws; and will willingly conform to all regulations, usages and requirements of the Knights of the Ku Klux Klan, which do now exist or which may be hereafter enacted; and I will render at all times loyal respect and steadfast support to the Imperial Authority of same; and will heartily heed all official mandates, decrees, edicts, rulings and instructions of the Imperial Wizard thereof. I will yield prompt response to all summons, I having knowledge of same, Providence alone preventing.

* * * * *

"I swear that I will keep secure to myself a secret of a Klansman when same is committed to me in the sacred bond of Klansmanship, the crime of violating this solemn oath, treason against the United States of America, rape and malicious murder alone excepted."

That said Invisible Empire is in a sense a super government throughout the State of Oklahoma, and the oath of its members require them to respect a strict obedience to its laws, orders and mandates and of all orders of the officers in authority, and that such oath is contrary to and would prevent said members from obeying the laws of the state and federal government and in conflict with their oath and duty to this super government.

Plaintiff avers that in addition to the other district and county officers as hereinabove alleged, or many of them, being members of the Knights of the Ku Klux Klan, he is informed, believes and so charges to be true that the Attorney General of this state is also a member of said organization and that the constituted authorities within said state have in a sense given away and broken down under the influence, threats, power and direction of the said Knights of the Ku Klux —.

[fol. 6] That among the other officers within said membership of said Knights of the Ku Klux Klan, as plaintiff is advised, believes and so charges to be true, are about ninety percent of the officers of the National Guard and approximately twenty to twenty-five percent of the other members, or privates of the National Guard.

The plaintiff avers that because of the super government throughout the state of Oklahoma of the said Knights of the Ku Klux Klan, the plaintiff, as Governor of the state of Oklahoma aforesaid, was

unable to obtain the obedience of the peace officers of the state and counties, cities and towns aforesaid in the purpose of the punishment and the prevention of said crimes through the ordinary channels of justice, and that thereupon the plaintiff as the Governor of the state of Oklahoma aforesaid, finding that said course of crime was continuing without interruption and with complete immunity from the laws of the state, and that the officers of the state of Oklahoma, whose duty it was to deal with said crimes, were either unwilling or unable to apprehend and try any of said offenders, reached the conclusion that in certain localities in the state of Oklahoma particularly and throughout the state, there was a general state of insubordination and insurrection against the laws of the state, and therefore the plaintiff at different times and upon different occasions proclaimed certain portions of the territory of the state of Oklahoma to be in martial law, and as commander in chief of the military department and as the supreme chief civil magistrate of said state, directed the same to proceed in the effort to discover and to accuse and bring to trial those persons who would be guilty of said offenses against the laws of the state; that in said military occupation the plaintiff was enabled and did cause to be uncovered evidence of many of said depredations and prosecutions to be commenced against those who were guilty thereof, and in some cases said prosecutions went forward to investigations and some of the persons who had been guilty of said depredations were by said means brought to justice and others of said persons who were members of the said organization, known as the Invisible Empire, were accused by criminal informations and complaints and brought in danger of conviction and punishment, including the defendant Jewett.

Plaintiff further avers that on account of him declaring martial law throughout the state, various business men and newspapers, some of whom were in sympathy with the organization the Knights of the Ku Klux Klan, became antagonistic to the views of plaintiff in regard to martial law and also became strongly in opposition to martial law, and in certain localities, to-wit, Oklahoma City and the cities of Tulsa, Shawnee and Enid, Oklahoma, a great many of the [fol. 7] people became very bitter in their denunciation of the acts of plaintiff, and the newspaper almost daily carried inflam-atory statements and editorials thereby poisoning and inflaming the minds of the people with prejudice and malice towards plaintiff, and especially in the capital city where the said Court of Impeachment is holding its sittings.

Plaintiff avers that he is informed, believes and therefore avers the fact to be, that the defendant, the Knights of the Ku Klux Klan and the members of that organization, and the defendant Jewett as the chief executive officer of said organization, took advantage of the opportunity, confederated and conspired with other people who were opposed to martial law and with some of the leading newspapers published in the various cities above named, and caused said papers to circulate many editorials and inflam-atory statements, which were vicious and hostile toward plaintiff, which were calculated to

and which did have the effect to excite and inflame the minds of the people against this plaintiff.

Plaintiff avers in August he issued his proclamation calling for a special election to be held on October 2, 1923, for the purpose of submitting to the people for their approval or rejection certain constitutional provisions; that thereafter proceedings were instituted in court to enjoin the holding of said election and the final decision in the court was only announced but two or three days before October 2. The court did not pass upon the validity or regularity of said election but refused to interfere on the ground that a court of equity would not enjoin in advance the holding of an election.

On account of the laws having not been complied with as relate to furnishing information to the voters as to the propositions submitted, and for the further reason that said propositions had been submitted without authority and on account of the importance of the questions submitted, plaintiff as Governor issued his proclamation revoking his former proclamation and therein made an effort to withdraw and call off said election; that the political enemies of plaintiff joined by the Knights of the Ku Klux Klan and the members thereof, contrary to law, caused to be placed on the ballot what is known as question number seventy-nine, which provided for the calling of a special session of the legislature on its own accord for impeachment purposes. On account of the acts of plaintiff in attempting to revoke his proclamation calling said election, and in an effort to legally prevent said election being held, his political enemies, as well as the Knights of the Ku Klux Klan and the members thereof, became exceedingly hostile and used every means in their power to inflame the minds of the people against the plaintiff; that said organization and parties did inflame the minds of a great many people against said plaintiff, and which condition was in existence at the date of the meeting of the legislature and has remained such to the extent that in connection with the Knights of the Ku Klux Klan dominated and influenced the majority of the members of the lower House and the members of the Court of Impeachment, and said parties are now under such influence.

Plaintiff avers that on the first day of November, 1923, the day upon which the Court of Impeachment aforesaid convened for the purpose of considering the articles of impeachment and receiving the plea of this plaintiff thereto, that the plaintiff appeared before said Court of Impeachment in person and by his counsel, and while in the presence of the court in the Senate chamber of the state at the Capitol building thereof, and while said court was in session, presided over by the Chief Justice of the Supreme Court of this state, the plaintiff received a communication in writing, delivered to him by one of the pages in the service of said court, demanding his resignation as Governor of the state and threatening that if he should not resign to take his life. Plaintiff is informed and believes and therefore avers the fact to be that said written communication was delivered to the doorkeeper at the door of said Senate chamber by parties unknown to this plaintiff, and plaintiff avers that he is informed and believes and therefore charges the fact to be that said

threat was instigated by some of the aforesaid defendants who are participating in the aforesaid conspiracy against this plaintiff, and plaintiff avers that since the eleventh day of October, 1923, when pursuant to the proclamation of this plaintiff both houses of the legislature of the state of Oklahoma convened at the Capitol of the state of Oklahoma, and for several weeks prior thereto, that a great many threats bearing no name have been communicated to this plaintiff through the mails and otherwise demanding his resignation and threatening to take his life if he should not comply with such demands. And plaintiff avers that he believes and therefore charges the fact to be that said threats are a part of the aforesaid conspiracy and are put forward by the actors therein to the end that this plaintiff may be intimidated from the purpose of defending himself against the accusations presented in the said articles of impeachment. And plaintiff avers that he believes and fears that his person is in imminent danger of assault imperiling his life at the hands of the defendants and others engaged in the aforesaid conspiracy if he attends in person the trial of the said articles of impeachment before the said Court of Impeachment, and plaintiff avers that he cannot adequately present his defense in said court [fol. 9] and cause without attending the proceedings of the same in person.

Plaintiff avers that he is informed, believes and so charges to be true that a majority of the members of the Court of Impeachment being members of the Knights of the Ku Klux Klan, conspired with other members of said court and with certain members of the House of Representatives and entered into an agreement, if not expressly, tacit agreement and understanding, in advance of the convening of said court that the said plaintiff should be removed from office without the consideration of the facts and the law, and to proceed in accordance with and pursuant to said conspiracy, agreement and understanding as aforesaid to have a trial of the said plaintiff only in form and as a result thereof enter a judgment removing said plaintiff from said office as Governor.

Plaintiff avers that he is informed and believes and therefore avers the fact to be that the defendants, the Knights of the Ku Klux Klan and members of that organization, and the defendant Jewett as the Chief Executive Officer of said association, have caused appeals to be made by letters, telegrams and personal communications from many of the members of said defendant association to the defendant members of the said House of Representatives and to members of said Court of Impeachment, commanding, importuning and threatening their said associates who are members of said Court of Impeachment to proceed with dispatch and certainty to remove the plaintiff from the said office as Governor of the state of Oklahoma; that large sums of money have been solicited and obtained by the defendant Knights of the Ku Klux Klan and its Chief Executive Officer, said Jewett from the membership of said organization within the state of Oklahoma and elsewhere, to be corruptly and unlawfully used in carrying forward the conspiracy aforesaid, to the end that the plaintiff may be removed from said office by the order of said Court of Impeachment.

Plaintiff further avers that in the capital city, being in Oklahoma City where the said Court of Impeachment is holding its sessions, he is informed, believes and therefore charges to be true that the membership in the invisible government herein referred to numbers between five and six thousand members, and that the chief executive office of said association within said state is located within said capital city, and all orders made and dispatched to the various subordinate officers and members throughout the state are made in and sent from said chief executive office in said city; that a large number of the membership of said organization within Oklahoma City during the present session of the legislature has been very active and great feeling of excitement and passion is now existing as a result thereof; that such feeling of excitement and passion surrounds constantly the said [fol. 10] members of the said Court of Impeachment and extends to the said court itself and many of its members, so that the said members of the said Court of Impeachment, or many of them, are under the influence of passion and prejudice against this plaintiff and the fear of the defendant the Knights of the Ku Klux Klan or Invisible Empire and its practices of secret and violent punishment, so that the said members of said Court of Impeachment are dominated and controlled and will be dominated and controlled completely in their consideration of said cause and their actions as members of said Court of Impeachment by fear, passion and prejudice and the physical domination of the said defendant the Knights of the Ku Klux Klan.

And plaintiff avers that he is advised that because of the premises the presence of the aforesaid confederation and conspiracy extending to the members of the said Court of Impeachment and the domination and influence of the defendant the Invisible Empire over the said members of the said Court of Impeachment and the condition of passion, prejudice and fear surrounding and prevailing the said Court of Impeachment, which has also operated upon the honorable House of Representatives of the state of Oklahoma in considering and presenting the aforesaid articles of impeachment as per a pre-arranged agreement, the said Court of Impeachment is without jurisdiction or legal power or authority to proceed against this plaintiff in the premises.

The plaintiff avers that the said criminal organization known as the Knights of the Ku Klux Klan and Invisible Empire, plaintiff is informed and believes, and therefore avers the fact to be, has succeeded in placing its members in the office of representative in the legislature of the state of Oklahoma to the extent that said criminal organization membership constituted more than a majority of said body; that on or about the twenty-ninth day of August, 1923, one Jess D. Pullen, who was and is a member of the House of Representatives of the state of Oklahoma, and who was and who, as the plaintiff is informed and believes and therefore avers the fact to be, was and is a member of said secret and criminal organization known as the Invisible Empire aforesaid, set on foot by certain letters that he communicated to other members of the said House of Representatives of the state of Oklahoma, who were also members

of said secret and criminal organization, a conspiracy to cause the legislature of the state of Oklahoma to be convened in extraordinary session, and to pretend that the plaintiff had been guilty of offenses constituting under the constitution and laws of the state of Oklahoma grounds for impeachment, and to cause pretended articles of impeachment to be presented by the House of Representatives of the [fol. 11] state of Oklahoma and its Managers to the Senate of the state of Oklahoma, to the end that the members of said criminal and secret organization who were also members of the Senate of the state of Oklahoma might pretend to try the plaintiff for said pretended offenses and might make an order as a Court of Impeachment removing the plaintiff from his said office as Governor of the state of Oklahoma; that pursuant to the proposals of the said letter, the said Pullen and divers other members of said secret and criminal organization who were also members of the House of Representatives of the state of Oklahoma, confederated and conspired together and under an agreement, if not expressly, a tacit agreement and understanding, to cause to be presented against the plaintiff to the Senate of the state of Oklahoma said pretended articles of impeachment, and thereafter pursuant to said conspiracy, confederation, agreement and understanding, the said legislature of the state of Oklahoma having been theretofore convoked by the proclamation of the Governor as aforesaid, for the purpose of enacting appropriate legislation for the regulation of the said secret and criminal organization, pretended to find articles of impeachment against the plaintiff, and did through the defendants designated as Managers of the House of Representatives of the state of Oklahoma, present to the Senate on the twenty-sixth day of October, 1923, in writing, certain pretended articles of impeachment, including upon their face twenty-two several charges and accusations against the official conduct of the plaintiff, which said pretended articles of impeachment, however, the plaintiff avers that he is advised, do not upon their face state any legal or constitutional ground for the impeachment of the plaintiff; plaintiff avers that thereupon the said Senate of the state of Oklahoma pretended by a certain order therein, made pursuant to said conspiracy and confederation, to suspend the plaintiff from the performance of his duties as Governor of the state of Oklahoma aforesaid, and plaintiff avers that because of the premises, he is obstructed and confused in the performance of his duties in the exercise of his rights as Governor of the state of Oklahoma, and plaintiff avers that he is informed and believes and therefore avers the facts to be that a large number, constituting more than a majority of the members of the Senate of the state of Oklahoma, are also members of said secret and criminal organization known as the Knights of the Ku Klux Klan and Invisible Empire, and are acting in and pursuant to the aforesaid confederation and conspiracy hereinbefore set out and averred, for the purpose and to the end of removing your plaintiff from the office of Governor, as members of the said Court of Impeachment, and to this end the said Court of Impeachment, did on the — day of October, 1923, adopt by discussion and vote certain rules of pro-

cedure to be put into force and effect upon the pretended trial of the [fol. 12] plaintiff aforesaid, among which said rules of procedure, provided as follows:

"Section 3. Any person before the court who shall file or present for filing any pleadings, or who shall make any statement or remark designed in disrespect toward or in contempt of the court, or any member thereof, may be deemed guilty of contempt of court and be expelled from the court room and otherwise punished as the court may direct."

Plaintiff avers that having been informed and believing that more than a majority of the members of the Court of Impeachment are members of the Knights of the Ku Klux Klan, and also having information which he believes and charges to be true that said members or a majority thereof had conspired, confederated and agreed in advance to go through a form of trial only and to return a verdict of guilty against plaintiff and render a judgment thereon removing him from said office, he filed a motion, or attempted to, with the Court of Impeachment, which said Court of Impeachment by an order made upon a vote of its members, denied the right of said plaintiff to file any motion questioning the qualifications of said members; that in said motion plaintiff charged that the members of said Court of Impeachment belonging to said Invisible Empire were acting in pursuance to a conspiracy theretofore entered into and an agreement to return and enter a judgment of guilty thereon against the plaintiff, and as a result thereof that said members of said Court of Impeachment who were members of said organization the Knights of the Ku Klux Klan were disqualified from sitting as members of said court, and that plaintiff prayed the court to be permitted to introduce testimony showing such disqualification but that said court by an order refused to permit plaintiff to examine members of the court or produce other testimony showing the disqualification of members of said court or any of them, which fact this plaintiff is ready to verify.

Plaintiff further avers that he filed a motion with said Court of Impeachment praying that the articles of impeachment presented to said Court of Impeachment by the House of Representatives be quashed and set aside and in substance alleged in said motion that said articles of impeachment were found and presented in pursuance to an agreement and conspiracy entered into by the members of the lower house, or a majority thereof, prior to the convening of said house, who were members of the Knights of the Ku Klux Klan, and as a result of demands and instructions from the officers of the said Knights of the Ku Klux Klan, and that by reason thereof, said articles of impeachment were void and the same were insufficient to confer upon the Senate and the Court of Impeachment jurisdiction to try and determine the issue as to the guilt or innocence of said plaintiff; that said Court of Impeachment by vote of its members [fol. 13] sustained a motion to strike said motion to quash said articles of impeachment and refused to consider the same.

Plaintiff further avers that he is informed, believes and charges

to be true that said Court of Impeachment does not intend and is not now proceeding to enter upon the consideration of said charges pending against this plaintiff with a view of determining the truth thereof, but to the contrary it is only intended that said trial shall be in form only, and under an agreement, conspiracy and understanding that a judgment removing plaintiff from office shall be rendered.

Plaintiff avers that he is advised that in the constitution and laws of the state of Oklahoma, there is no provision of law whereby this plaintiff may have an opportunity to purge the said Court of Impeachment of those members who are hostile to this plaintiff and who are disqualified to act in the trial of said impeachment proceedings and no remedy afforded other than by the motion sought to be filed by him, so that under the provisions of the constitution and laws of the State of Oklahoma, governing the trial of this plaintiff as Governor of the state of Oklahoma in said impeachment proceedings, there is no legal means or remedy by which the plaintiff may secure a fair trial or may, indeed, secure any constitutional trial at all upon the accusations and pretended articles of impeachment pending as aforesaid against him; and plaintiff avers that he is advised and therefore avers the fact to be that because of the premises by the provisions of the constitution and laws of the state of Oklahoma aforesaid, and the rules of said Court of Impeachment made and adopted as set out herein, and by the manner in which said laws and rules have been and are about to be administered, he is deprived of the equal protection of the law secured and guaranteed to him and all other citizens of the United States by the terms of the Fourteenth Amendment to the Constitution of the United States, and is about to be deprived of his property without due process of law. Plaintiff avers that the said defendants as aforesaid adopted and put into effect the following rule: "Section 18. No member of the court shall be called as a witness to testify on behalf of the House of Representatives or the respondent" and plaintiff avers that he is advised and informed and believes and therefore avers the fact to be that under the provisions of the aforesaid Fourteenth Amendment to the Constitution of the United States, he has the right guaranteed by said provisions of the Federal Constitution to call any person whatsoever who has knowledge of the material facts at issue in said proposed trial of said pretended articles of impeachment [fol. 14] ment presented against this plaintiff as aforesaid, and that by the provision of the said rule hereinbefore set out and exhibited as Section eighteen, he is and will be prevented from calling as a witness or using the testimony of any of the defendants who are members of said Court of Impeachment to prove whether or not such members are qualified to act upon said trial, or to prove any of the material facts within the knowledge of the said members of said court bearing upon the issues to be tried by said Court of Impeachment; and plaintiff avers that he is informed and believes and therefore avers the fact to be that a portion of the members of the said Court of Impeachment have knowledge of facts material to the issues in said cause, and that said members of said Court are com-

petent and material witnesses in behalf of this plaintiff upon said trial; which Rule and its enforcement deprives plaintiff of the equal protection of the law and due process of law under the 14th amendment of U. S. Constitution and plaintiff avers that he is informed and believes and therefore avers the fact to be that, unless the plaintiff is relieved by the orders of this honorable court, the defendants will proceed on or about the 9th day of November, 1923, to cause to be enacted the form only of a trial of this plaintiff upon the aforesaid pretended articles of impeachment, and will cause to be rendered in said proceedings a pretended judgment removing this plaintiff from the office of Governor of the state of Oklahoma, and further pretended judgments and orders against this plaintiff and his property; and plaintiff avers that he is advised and therefore avers the fact to be that he is without remedy either at law or in equity under the laws of the state of Oklahoma, to relieve or remedy the grievances hereinbefore complained of, either at law or in equity, and that he is without remedy at law to relieve himself from, or correct, or prevent the grievances hereinbefore set out and complained of, except by the orders of restraint and injunction of this honorable court.

Plaintiff further avers that the constitution of the state of Oklahoma makes no provisions for a suspension of an elective officer, and especially the Governor, upon presenting to the Senate articles of impeachment against him; that the said Senate unlawfully and without authority passed a resolution on or about the 25th day of October, 1923, the effect of which was to suspend said plaintiff from performing the duties of the office as Governor; that the salary of the office of Governor is \$4,500.00 per annum, and the order aforesaid and the acts of the said Senate was a result of the action of the defendants herein and at their instance and request, and has the effect if valid to deprive the plaintiff of his salary; that the defendant M. E. Trapp as Lieutenant Governor acquiescing in all of the unlawful acts of the other defendants and in pursuance of the said [fol. 15] resolution of the Senate aforesaid is now wrongfully and unlawfully usurping the duties of the plaintiff herein and is interfering with the plaintiff in his rightful discharge of said duties as Governor of the state of Oklahoma; that said defendant M. E. Trapp is acting in collusion with the other defendants and as a result of the conspiracy alleged herein.

Wherefore the premises considered, the plaintiff prays for a writ of subpoenas to the said defendants and each of them, returnable according to the laws and the rules of this honorable court, and that the defendants and each of them and all persons acting by, through them or any of them be restrained by this honorable court from proceedings with any pretended trial of the pretended articles of impeachment presented against this plaintiff as aforesaid, and from in any wise molesting this plaintiff in the exercise of his duties as Governor of the state of Oklahoma, or in interfering with the exercise of such duties on the part of this plaintiff, and that such restraining order be made returnable at some convenient and proper date to this court, and that the plaintiff have the process of this court to produce witnesses upon the return day of said restraining

order, and that upon hearing that a temporary order and decree of injunction issue by this honorable court, and the defendants and each of them be enjoined and restrained from proceeding or attempting to proceed upon the trial of said articles of impeachment, and from interfering with or pretending to interfere with the plaintiff as Governor of the state of Oklahoma until the final trial of said cause, and that upon the final trial of said cause by the judgment and decree of this honorable court, the defendants and each of them, and all persons acting by, through or under them and each of them, be permanently enjoined as aforesaid, and for the costs of this action and for all other and further relief to which this plaintiff may in equity and good conscience be entitled.

F. E. Riddle, H. B. Martin, Warren K. Snyder, Claud Newlen, Tom W. Neal, Solicitors for Plaintiff.

[fol. 16] Jurat showing the foregoing was duly sworn to by J. C. Walton omitted in printing.

[File endorsement omitted.]

[fol. 17] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

MOTION FOR RESTRAINING ORDER—Filed Nov. 7, 1923

Comes now the plaintiff in the above entitled and numbered cause and files this his motion praying for a temporary restraining order in said cause and for such motion states:

That upon the verified petition filed herein and the pleadings filed thereto by the defendants, said plaintiff is entitled to a restraining order as prayed for.

Wherefore, he prays that on the hearing thereof, the Court grant him a restraining order and set said matter down for further hearing for an injunction on some date convenient and agreeable to the Court.

F. E. Riddle, H. B. Martin, Warren K. Snyder, Claud Newlen, Tom W. Neal, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 18] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ORDER DENYING MOTION FOR RESTRAINING ORDER

On this 7th day of November, 1923, the plaintiff appears by F. E. Riddle Esq., and H. B. Martin, Esq., his attorneys, and the defendants House of Representatives and Board of Managers and M. E. Trapp, Lieut. Governor, appearing by Messrs. Geo. F. Short, Atty. General, Edwin Dabney, Leon Hirsch and C. W. Miller, Assistants to Attorney General, and Messrs. Lydick & Wilson, their attorneys; and the Knights of the Ku Klux Klan and N. C. Jewett, chief executive officer thereof, appearing not, either in person or by counsel. Thereupon, the application for a restraining order herein is presented to the court, arguments of counsel are heard thereon and the court being duly advised in the premises, it is ordered that said application for a restraining order be and the same is denied, to which order and ruling of the court, the plaintiff excepts.

[fol. 19] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

MEMORANDUM OPINION—Filed Nov. 7, 1923

The motion is for a restraining order upon the ground that the plaintiff is denied the equal protection of the laws and due process of law under the Federal Constitution. The hearing has been upon the bill alone. Authorities are cited by counsel where courts are said to have been unable to discharge their functions freely and independently, owing to domination, pre-judgment or influence, external or otherwise. Among them is the late decision in *Moore v. Dempsey*, by the Supreme Court, on February 19, 1923. There the liberty of the defendant was sought by a petition for a writ of habeas corpus. The facts alleged were held sufficient as against a demurrer. The cases are not deemed applicable.

There is objection by the defense because this is a suit against the State, and one in which process is sought against a court of the state. It is unnecessary to consider these questions.

This is a suit in equity for injunctive relief against a legislative court of inquiry, involving the title of the plaintiff to an elective office, arising wholly under state law. The relief is necessarily of a political nature. But equity does not have cognizance of political controversies, and its jurisdiction may not be invoked as an aid to a candidate for, or an incumbent of, an office, without an enabling statute; and none has been enacted on the subject. *Giles v. Harris*, 189 U. S. 475. *Ex Parte Sawyer*, 124 U. S. 548.

The case is ruled apart from the merits, by the limitations upon the equity powers of this court. They are wanting here. The restraining order is therefore denied.

Lawton, Okla., Nov. 7, 1923.

John H. Cotteral, District Judge.

[File endorsement omitted.]

[fol. 20] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WESTERN OKLAHOMA

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT—Filed Nov. 21, 1923

To the Honorable Judges of the District Court of the United States for the Western District of Oklahoma:

The complainant J. C. Walton, the leave of court first had, files this his supplemental bill of complaint, and further complaining of the defendants herein represent- that since the filing of his original bill of complaint the said defendants have proceeded with the pretended trial of this plaintiff in the Court of Impeachment upon the articles of impeachment filed as described in his original bill of complaint.

That during said pretended trial of this respondent in said Court of Impeachment his constitutional rights were disregarded in that the general rules of evidence governing such trials and governing trials of criminal proceedings in the courts of Oklahoma were from time to time changed and wholly disregarded, and the court during said trial adopted rules which modified and radically changed the general and fundamental rules of evidence, thereby affecting complainant's fundamental rights under the law of the land, during said trial, which orders, proceedings and action of the court denied this complainant due process of law and the equal protection of the law as provided for in the XIV Amendment to the Constitution of the United States.

[fol. 21] The complainant further avers that the defendants since the filing of the plaintiff's original bill have proceeded pursuant to the original conspiracy and confederation between the defendants, set out in plaintiff's bill of complaint, to carry out the purposes of said conspiracy and confederation and to make it appear that the defendant was being tried in the said Court of Impeachment, whereas in truth and in fact the defendants together with the said Court of Impeachment proceeded only pursuant to the aforesaid conspiracy and confederation to the end that the complainant might be removed from his office as Governor of the state of Oklahoma without a real trial upon the law and the facts, but pursuant only to the form of a trial to effectuate and carry out the said conspiracy and its purposes.

Complainant further avers that as a result of said wrongful pro-

ceedings and pretended trial as aforesaid, the said Senate sitting as a Court of Impeachment did on the 19th day of November, 1923, in pursuance to said conspiracy and agreement hereinbefore alleged and set out, pretended to render and enter a judgment against this respondent convicting him on various and sundry charges and articles of impeachment so presented against him, and to remove him from his office as Governor of the state of Oklahoma, and further to pretend to render a judgment against him, included in said journal entry so entered of record, depriving him of his salary to wit: \$4,500.00 per annum.

Complainant further avers that the said defendants herein are now threatening to cause said judgment to be executed and to oust your plaintiff from office thereunder and to enforce the same as to the costs in said proceeding by levying upon his property to his great damage; that said judgment of ouster, as well as said judgment for costs, is wholly void by reason of the agreements, conspiracies and confederation as herein set out; that complainant has no adequate and complete remedy at law and unless restrained by an order or injunction of this court, said defendants will proceed to enforce said judgment in the manner and to the effect as herein alleged; that in pretending to render the aforesaid pretended judgment, depriving this complainant of the office of Governor of the state of Oklahoma and its privileges, immunities and emoluments, and depriving this plaintiff of his property, the plaintiff has been denied the due process of law and the equal protection of the laws guaranteed to him under the constitution of the United States and particularly the XIV Amendment thereto.

[fol. 22] Wherefore plaintiff prays as in his original bill.

F. E. Riddle, H. B. Martin, Warren K. Snyder, Claud Nowlen,
Tom W. Neal.

Jurat showing the foregoing was duly sworn to by C. J. Walton omitted in printing.

[File endorsement omitted.]

[fol. 23] IN THE DISTRICT COURT OF THE UNITED STATES WITHIN
AND FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

Before the Honorable Jno. H. Cottrell, Judge of the District Court
of the United States Within and for the Western District of the
State of Oklahoma

MOTION TO DISMISS BILL OF COMPLAINT—Filed Nov. 20, 1923

Come now the Defendants, The House of Representatives of the
State of Oklahoma, and its Speaker W. D. McBea, Isaac W. Gray,

Chief Clerk, and the Board of Managers above-named; and M. E. Trapp, Lieutenant Governor, by their attorneys, George F. Short, Attorney General of Oklahoma, Edwin Dabney and Leon S. Hirsh, Assistant Attorneys General of Oklahoma, and J. D. Lydick, appearing specially and without submitting to the jurisdiction of this court to try the issues involved in this cause, or to make any valid orders herein, and move this honorable court to dismiss said cause for the following causes and reasons:

[fol. 24] I. That the said bill of complaint does not state such a case as to entitle the plaintiffs to the relief prayed, or to any relief.

II. That *is* appears upon the face of said bill of complaint that this court has no jurisdiction of the subject matter of this cause.

III. That the judicial power of this court does not extend to the granting of the relief prayed for, nor for any relief against these defendants and in favor of this plaintiff.

IV. That it appears from said bill of complaint that the supposed grounds of jurisdiction of a federal court are frivolous, with no facts alleged sufficient to show or make it appear that any real substantial federal question is involved.

V. That there is no equity in said bill of complaint.

Wherefore, and for divers other reasons of objection appearing upon the face of said bill of complaint, these defendants pray the judgment of this honorable court whether they shall be compelled to make further or any answer to the said bill of complaint and they humbly pray to be hence dismissed with their reasonable costs in this cause sustained.

George F. Short, Attorney General of Oklahoma; Edwin Dabney, Leon S. Hirsh, Assistant Attorneys General of Oklahoma, and J. D. Lydick, Attorneys for the Above-named Defendants.

[fol. 25] [File endorsement omitted.]

[fol. 26] IN THE DISTRICT COURT OF THE UNITED STATES WITHIN
AND FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

DECREE—Filed Nov. 21, 1923

Now on this the 21st day of November, 1923, the above entitled cause came on regularly for hearing, before the Honorable John H. Cotteral, Judge of the above entitled Court, upon the motion filed by the Defendants, the House of Representatives of the State of Oklahoma, and its Speaker, W. D. McBee, Isaac W. Gray, Chief Clerk,

the Board of Managers and M. E. Trapp, Lieutenant Governor of the State of Oklahoma, to dismiss the bill of complaint and supplemental bill thereto of the Plaintiff herein; the Plaintiff appearing by and through his counsel, F. E. Riddle, H. B. Martin, and the Defendants appearing by and through their attorneys, George F. Shirt, Attorney General of Oklahoma, Edwin Dabney and Leon S. Hirsh, Assistant Attorneys General, and J. D. Lydick, the said motion was submitted to the Court.

The Court thereupon finds that the allegations contained in the motion to dismiss the bill of complaint, and the supplemental bill thereto, are true, and that the bill of complaint does not state such a case as to entitle the Plaintiff to the relief prayed for; that this Court has no jurisdiction of the subject matter, and is powerless to grant the relief prayed for, and that the said bill of complaint and the supplemental bill do not present any constitutional question authorizing this Court to take jurisdiction of same.

[fol. 27] It is, therefore, by the Court, ordered, adjudged and decreed that the Plaintiff's bill and its said supplement do stand dismissed out of this Court, as against the Defendants, and the costs be paid by the plaintiff, J. C. Walton. To all of which decree, the plaintiff, at the time, in open court excepts.

John H. Cotteral, Judge.

O. K. George F. Short, Attorney General of Oklahoma.

[File endorsement omitted.]

[fol. 28] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

CERTIFICATE OF JURISDICTIONAL QUESTION—Filed Nov. 21, 1923

The District Court of the United States for the Western District of Oklahoma hereby certifies to the Supreme Court of the United States that on the 21st day of November, 1923, an order or decree was entered in the above entitled action pursuant to the decision of said court sustaining a motion filed by the defendants to dismiss for lack of jurisdiction or grounds, on the following grounds specified in said motion, to-wit:

1st. That it appears upon the face of said Bill of Particulars that this court has no jurisdiction of the subject matter of this cause.

2nd. That the judicial power of this court does not extend to the granting of the relief prayed for, nor for any relief against said defendants and in favor of said plaintiff.

A copy of such Bill of Complaint and Supplemental Bill filed thereto, and motion to dismiss are contained in the judgment roll

filed herein, to which reference is had for more particular terms thereof.

And this court further certifies that in said cause the jurisdiction of this court is in issue and further certifies to the Supreme Court of the United States said question of jurisdiction raised by said [fol. 29] motion to dismiss said Bill of Complaint on the grounds therein set forth specifically, and the further question as to whether or not this court as a court of equity has any jurisdiction over the subject matter in that the question of the right to office of Governor is involved and the question of the removal of the complainant from said office on the ground that said questions are political in their nature and not subject to review or to be interfered with by this court as a court of equity.

Dated Oklahoma City, November 21, 1923.

John H. Cottoral, Judge of the United States District Court
for the Western District of the State of Oklahoma.

[File endorsement omitted.]

[fol. 30] IN THE UNITED STATES DISTRICT COURT WITHIN AND
FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

APPEAL AND ALLOWANCE—Filed Nov. 21, 1923

The above named Plaintiff, J. C. Walton, conceiving himself aggrieved by the order and decree entered on November 21, 1923, in the above entitled proceeding, doth hereby appeal from said order to our Supreme Court of the United States, and he prays that his appeal may be allowed and that his transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States, together with a certificate of this court as by law required.

F. E. Riddle, H. B. Martin, Warren K. Smith, Claud Nowlen,
Tom W. Neal, Attorneys for Plaintiff.

Oklahoma City, November 21, 1923.

And now to-wit: on November 21, 1923: It is ordered that the appeal in this cause be allowed as prayed.

John H. Cottoral, Judge United States District Court for the
Western District of the State of Oklahoma.

[File endorsement omitted.]

[fol. 31] IN THE UNITED STATES DISTRICT COURT WITHIN AND
FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Nov. 21, 1923

And now comes J. C. Walton, appellant, and makes and files his assignment of error.

1st. The United States District Court for the Western District of the state of Oklahoma erred in dismissing complainant's bill of complaint and his supplemental bill of complaint on the grounds and for the reason that said court had no jurisdiction in equity to grant the relief prayed or any part thereof.

2nd. That the said District Court for the United States for the Western District of Oklahoma erred in refusing to take jurisdiction of said proceeding and in failing to entertain the same for the purpose of granting the relief prayed for in said original and supplemental bill of complaint.

Wherefore complainant prays that on hearing hereof the order and decree of the court appealed from may be reversed and vacated to the end that said complainant may have the relief prayed for.

F. E. Riddle, H. B. Martin, Warren K. Snyder, Claude Nowlen, and Tom W. Neal, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 32] IN THE UNITED STATES DISTRICT COURT WITHIN AND FOR
THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

APPEAL BOND FOR \$500.00—Approved and Filed Nov. 23, 1923;
omitted in printing

[fol. 33] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD—Filed Nov. 28, 1923

To the Clerk of the United States Court for the Western District of Oklahoma:

You will please make up and transcribe the record in the above entitled and numbered cause for the Supreme Court of the United States, and include therein the following:

- 1st. The bill of complaint and the supplemental bill of complaint.
- 2nd. The appearance of said defendants at Lawton upon the application for a temporary restraining order.
- 3rd. The order of the court denying the temporary restraining order, and memorandum of opinion thereon.
- 4th. The motion of the defendant to dismiss said cause.
- 5th. The record of the hearing thereof.
- [fol. 34] 6th. The decree rendered denying the temporary injunction and dismissing the complainant's original and supplemental bill of complaint, and exceptions noted.
- 7th. The appeal and allowance.
- 8th. Citation and acceptance of service thereof.
- 9th. Assignment of errors.
- 10th. Certificate of trial judge, certifying jurisdictional question.
- 11th. Appeal bond and approval thereof.
- 12th. Proper certificate of the clerk.
- 13th. We elect to have the clerk of the Supreme Court of the United States supervise and print the record.

F. E. Riddle, Tulsa, Oklahoma. H. B. Martin, Tulsa, Oklahoma. Warren K. Snyder, Oklahoma City, Oklahoma. Claud Nowlen, Oklahoma City, Oklahoma. Tom W. Neal, Poteau, Oklahoma.

Received of F. E. Riddle, counsel for the plaintiff, J. C. Walton, a true copy of the above præcipe on this the 27th day of November, 1923.

George F. Short, J. D. Lydick, Attorneys for Defendants
Named in Motion to Dismiss.

[File endorsement omitted.]

[fol. 35] UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

CLERK'S CERTIFICATE

I, Harry L. Finley, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in case Number 621, in Equity, in said court, wherein J. C. Walton, is plaintiff, and The House of Representatives of the State of Oklahoma, and others, are defendants, as full, true and complete as the said transcript purports to contain and as called for by the præcipe for transcript of the record above set forth.

I further certify that the original citation is hereto attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in the City of Guthrie, in said District, this 1st day of December, A. D. 1923.

Harry L. Finley, Clerk, By Theodore M. Filson, Deputy.
[Seal of the United States District Court, Western District
of Oklahoma.]

Endorsed on cover: File No. 29,999. W. Oklahoma D. C. U. S. Term No. 689. J. C. Walton, appellant, vs. The House of Representatives of the State of Oklahoma and its Speaker, W. D. McBee; Isaac W. Gray, chief clerk, et al. Filed December 10th, 1923. File No. 29,999.